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Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Memorandum by the Secretary-General

Introduction

1. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 ("International Tribunal") and adopt the Statute of the International Tribunal annexed to the Secretary-General's report prepared pursuant to Security Council resolution 808 (1993) of 22 February 1993.

2. Elections for the judges of the International Tribunal took place in 1997. The terms of office of the 11 judges who were elected in those elections are due to expire on 16 November 2001.

3. By its resolution 1166 (1998) of 13 May 1998, the Security Council decided to establish a third Trial Chamber of the International Tribunal and, to that end, to amend articles 11, 12 and 13 of the Tribunal's Statute and replace those articles with the provisions which are set out in the annex to that resolution. It also decided that three additional judges should be elected as soon as possible to serve in the additional Trial Chamber.

4. Elections for the three additional judges took place in 1998. In accordance with Security Council resolution 1166 (1998) of 13 May 1998, the terms of office of the three additional judges who were so elected are also due to expire on 16 November 2001.

5. Pursuant to what is now article 13 bis, subparagraph 1 (a), of the Statute of the International Tribunal, following the amendments that were introduced by Security Council resolution 1329 (2000) of 30 November 2000, the Legal Counsel, on behalf

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of the Secretary-General, invited, by circular letter of 10 November 2000, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for permanent judges of the International Tribunal. In accordance with article 13 bis, subparagraph 1 (b), of the Statute, as so amended, each State was invited to nominate, within 60 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality.

6. The 24 nominations which had been received by the Secretary-General within the period stipulated in subparagraph 1 (b) of article 13 bis of the Statute of the International Tribunal, as amended by Security Council resolution 1329 (2000) of 30 November 2000, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 1 (c) of article 13 bis, as so amended, by means of a letter dated 11 January 2001 (S/2001/61). In that letter, the Secretary-General noted that the number of candidates whose nominations had been received was short of the minimum number of candidates who, in accordance with subparagraph 1 (c) of article 13 bis of the Statute, as amended, were to make up the list which the Security Council was to establish for transmission to the General Assembly. In the light of this information, the Security Council, at its 4260th meeting, on 19 January 2001, decided to extend the deadline for nominations until 31 January 2001. The President of the Council informed the Secretary-General of that decision by means of a letter dated 19 January 2001 (S/2001/63).

7. The 26 nominations which had been received within the period stipulated in subparagraph 1 (b) of article 13 bis of the Statute of the International Tribunal, as extended by the Security Council in the decision taken at its 4260th meeting, on 19 January 2001, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 1 (c) of article 13 bis, by means of a letter dated 1 February 2001. In that letter, the Secretary-General noted that the number of candidates whose nominations had been received remained short of the minimum number of candidates who, in accordance with subparagraph 1 (c) of article 13 bis of the Statute, were to make up the list which the Security Council was to establish for transmission to the General Assembly. At its 4274th meeting, on 8 February 2001, the Security Council, in accordance with subparagraph 1 (d) of article 13 bis of the Statute of the Tribunal, decided to forward the list of 26 candidates to the General Assembly. The list was adopted by the Council in its resolution 1340 (2001) of 8 February 2001 and was formally conveyed to the President of the General Assembly by means of a letter dated 8 February 2001 from the President of the Security Council (A/55/771).

8. The list of candidates for permanent judges and the procedure for the election of the permanent judges of the International Tribunal are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/55/773).

I. List of candidates for permanent judges of the International Tribunal

9. The list of candidates for permanent judges of the International Tribunal is as follows:*

Mr. Carmel A. Agius (Malta)
Mr. Richard Allen Banda (Malawi)
Mr. Mohamed Amin El Abbassi Elmahdi (Egypt)
Mr. Mohamed El Habib Fassi Fihri (Morocco)
Mr. David Hunt (Australia)
Mr. Claude Jorda (France)
Mr. O-gon Kwon (Republic of Korea)
Mr. Liu Daqun (China)
Mr. Abderraouf Mahbouli (Tunisia)
Mr. Richard George May (United Kingdom of Great Britain and Northern Ireland)
Mr. Theodor Meron (United States of America)
Mrs. Florence Ndepele Mwachande Mumba (Zambia)
Mr. Rafael Nieto Navia (Colombia)
Mr. Leopold Ntahompagaze (Burundi)
Mr. Alphonsus Martinus Maria Orie (Netherlands)
Mr. Fausto Pocar (Italy)
Mr. Jonah Rahetlah (Madagascar)
Mr. Patrick Lipton Robinson (Jamaica)
Mr. Almiro Simões Rodrigues (Portugal)
Mr. Wolfgang Schomburg (Germany)
Mr. Mohamed Shahabuddeen (Guyana)
Mr. Demetrakis Stylianides (Cyprus)
Mr. Krister Thelin (Sweden)
Mr. Volodymyr Vassylenko (Ukraine)
Mr. Karam Chand Vohrah (Malaysia)

II. Procedure for the election of permanent judges

10. The election of permanent judges will take place in accordance with the following provisions:

(a) Article 13 and article 13 bis of the Statute of the International Tribunal, as amended by Security Council resolution 1329 (2000) of 30 November 2000;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal, it was decided at the time of the previous elections of judges in 1993, 1997 and 1998 to follow similar election procedures in the General Assembly. The Secretary-General

* By a communication received on 9 February 2001, the Permanent Representative of the Philippines to the United Nations informed the President of the General Assembly that his Government had decided to withdraw the candidature of Ms. Miriam Defensor Santiago, one of the 26 candidates on the list established by the Security Council.

suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of permanent judges of the International Tribunal.

11. In accordance with article 13 bis, subparagraph 1 (d), of the Statute of the International Tribunal, as amended by Security Council resolution 1329 (2000) of 30 November 2000, the Holy See and Switzerland, being non-member States which maintain permanent observer missions at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

12. On the date of the election, the General Assembly will elect 14 permanent judges from the list of candidates submitted to it by the Security Council.

13. According to article 13 of the Statute of the International Tribunal, as amended, permanent judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to that same provision, due account shall be taken in the overall composition of the Chambers of the International Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

14. In accordance with subparagraph 1 (d) of article 13 bis of the Statute of the International Tribunal, as amended, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

15. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 189 Member States, together with the two non-member States mentioned in paragraph 11 above. Accordingly, 96 votes constitute an absolute majority in the Assembly for the purpose of the present election.

16. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than 14 candidates.

17. If, in the first ballot, the number of candidates obtaining an absolute majority is less than 14, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until 14 candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than 14 candidates less the number of candidates who have already obtained absolute majorities.

18. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

19. If, in the first ballot, more than 14 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until 14 candidates, and no more, obtain an

absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 14 candidates.

20. When 14 candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.

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Causes of conflict and the promotion of durable peace and sustainable development in Africa

Letter dated 7 February 2001 from the Permanent Representative of South Africa to the United Nations addressed to the President of the General Assembly

I have the honour, in my capacity as Chairman of the Coordinating Bureau of the Movement of Non-Aligned Countries, to enclose herewith the statement I delivered to the Coordinating Bureau on 6 February 2001 pertaining to the letter dated 22 January 2001 (A/55/741) from the Chargé d'affaires a.i. of the United States Mission to the United Nations addressed to the President of the General Assembly (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 50.

(*Signed*) Dumisani S. **Kumalo**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

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Annex to the letter dated 7 February 2001 from the Permanent Representative of South Africa to the United Nations addressed to the President of the General Assembly

Statement by the Chair of the Non-Aligned Movement to the Coordinating Bureau, 6 February 2001

I would like to draw the attention of the Coordinating Bureau to a recent statement by former United States Ambassador Richard Holbrooke in which the Movement of Non-Aligned Countries was mentioned.

Because Ambassador Holbrooke took a further decision to distribute the said statement as an official United Nations document under the General Assembly agenda item entitled "Causes of conflict and the promotion of durable peace and sustainable peace in Africa" (A/53/741), the Chair felt compelled to respond. The decision by the United States Mission to publish the statement under this General Assembly agenda item can only be seen as an attempt to question the legitimacy of the Movement of Non-Aligned Countries.

In his statement Ambassador Holbrooke suggested that the African members of the Movement of Non-Aligned Countries should leave our Movement. This attempt by a non-member of the Movement to prescribe to the African members of the Movement is at best uninformed, or at worst, it is misguided, misleading and constitutes an affront to members of the Movement as a whole.

The founding principles of the Movement of Non-Aligned Countries — respect for the Charter of the United Nations and the sovereign equality and independence of all nations — remain valid. These principles are reflected in the Movement's agenda endorsed at the highest level at its various summits of Heads of State or Government, the most recent being held in Durban, South Africa, in 1998.

The members of the Movement are steadfast in promoting these principles in the United Nations General Assembly and its Main Committees, and the Security Council. This is a tribute to the Movement, which represents a broad majority of developing countries from all regions of the world, brought together in their striving for common, legitimate and laudable goals for a world based on peace, justice and dignity; and against unilateral coercive measures, exploitation and trade restrictions imposed by the rich and powerful.

South Africa is proud to be the Chair of the Movement of Non-Aligned Countries. For our people, the Movement will always be remembered for having stood steadfast in support of our struggle against apartheid while many outside the Movement were either complacent or supportive of the racist regime of our past.

In spite of the recent past, the Movement of Non-Aligned Countries believes that the critical problems the United Nations has to confront — underdevelopment and the lack of global peace and security — require a partnership between the countries of the North and the South. The Movement is committed to building this partnership either bilaterally or in meeting annually with the European Union, the Group of Eight industrialized countries or the Scandinavian countries.

We will remain seized of the challenges facing all members of the Movement. I am convinced that Movement members will continue to be fully engaged in a collective effort, and in collaboration with partners of the North, in the pursuit of a multilateral, rules-based system in which developing countries have full representation.